

David K. Callahan, P.C. (IL 6206671), dcallahan@kirkland.com
KIRKLAND & ELLIS LLP
300 N. LaSalle Street
Chicago, Illinois 60654
Telephone: 312-862-2000
Facsimile: 312-862-2200

Attorney For Plaintiffs and Counter-defendants
BAXTER HEALTHCARE CORPORATION,
BAXTER INTERNATIONAL INC., and
BAXTER HEALTHCARE SA

Maureen K. Toohey (SBN 196401), mtoohey@toohey.com
TOOHEY LAW GROUP, LLC
One Financial Center, 15th Floor
Boston, Massachusetts 02111
Telephone: (617) 748-5511

Attorney for Plaintiff and Counter-defendant
DEKA PRODUCTS LIMITED PARTNERSHIP

Juanita R. Brooks (SBN 75934), jbrooks@fr.com
FISH & RICHARDSON P.C.
12390 El Camino Real
San Diego, California 92130
Telephone: (858) 678-5070
Facsimile: (858) 678-5099

Attorney for Defendants and Counter-claimants
FRESENIUS MEDICAL CARE HOLDINGS,
INC. AND FRESENIUS USA, INC.

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

BAXTER HEALTHCARE CORPORATION,
BAXTER INTERNATIONAL INC., BAXTER
HEALTHCARE SA, AND DEKA LIMITED
PARTNERSHIP,

Plaintiffs and Counter-defendants,

vs.

FRESENIUS MEDICAL CARE HOLDINGS,
INC., d/b/a FRESENIUS MEDICAL CARE
NORTH AMERICA, and FRESENIUS USA,
INC.,

Defendants and Counter-claimants.

Case No. C 07-01359 PJH (JL)

**STIPULATION OF REMOVAL OF
LIBERTY CYCLER FUNCTIONALITY
RELATING TO, AND DISMISSAL OF,
U.S. PATENT NO. 5,431,626**

1 WHEREAS, the Court has withdrawn its construction of the claim limitation “pressure
2 conveying element” as recited in U.S. Patent No. 5,431,626 (“the ’626 Patent”) and has invited
3 further briefing regarding the proper construction of this limitation, the limitation “pressure
4 transfer element,” and whether the claims reciting these limitations are indefinite;

5 WHEREAS, Plaintiffs seek to dismiss their allegations that any version of the Liberty™
6 peritoneal dialysis cyclor infringes the claims of the ’626 Patent subject to Fresenius’ agreement
7 not to employ certain designs as described below before the expiration of the ’626 Patent;

8 WHEREAS, during the development of the Liberty™ Cyclor, Fresenius engineers
9 considered and rejected using an inflatable air bag to actuate the cyclor’s safety bar in favor of
10 using a pair of pneumatically actuated cylinders to actuate the cyclor’s safety bar;

11 WHEREAS, during the development of the Liberty™ Cyclor, Fresenius engineers
12 considered and rejected using an inflatable air bladder behind the pump face in favor of placing
13 an inflatable air bladder in the door;

14 WHEREAS, separately and apart from the foregoing recitals, the parties agree to dismiss
15 all claims and counterclaims with respect to claims 34, 36-38, 41, 44, and 45 of U.S. Patent No.
16 5,431,626;

17 NOW, THEREFORE, the parties and their counsel of record stipulate as follows:

- 18
- 19 • Defendants agree that they will not make, use, sell, or offer for sale within the United
20 States or import into or export from the United States any peritoneal dialysis machine
21 using an inflatable air bag to actuate the cyclor’s safety bar or using an inflatable air
22 bladder behind the pump face of the cyclor or mere colorable variations thereof until
23 after the expiration of U.S. Patent No. 5,431,626;
 - 24 • Plaintiffs agree the current commercial version of the Liberty™ Cyclor is a peritoneal
25 dialysis machine that does not use an inflatable air bag to actuate the cyclor’s safety
26 bar or use an inflatable air bladder behind the pump face of the cyclor;
 - 27 • Although Plaintiffs contend the current commercial version of the Liberty™ Cyclor
and prior versions of the Liberty™ Cyclor infringe the claims of U.S. Patent No.

5,431,626 under the doctrine of equivalents and Defendants disagree with that contention, Plaintiffs dismiss from this suit, without prejudice and subject to the provision immediately above, U.S. Patent No. 5,431,626;

- Although Defendants contend the asserted claims of U.S. Patent No. 5,431,626 are not infringed and are invalid and Plaintiffs disagree with these contentions, Defendants dismiss from this suit, without prejudice, and subject to the provisions immediately above, U.S. Patent No. 5,431,626;
- The parties agree that each shall bear its own costs and attorneys' fees as to such claims, defenses and counterclaims; and
- The parties agree that this stipulation is not an injunction but reserve all rights and remedies to enforce its terms.

IT IS SO ORDERED.

Dated: 3/18/2010

By:

